

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1263428
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: AUGUSTO SOTO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1890

AUGUSTO SOTO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 25 May 1971, an Administrative Law Judge of the United States Coast Guard at New York, N.Y. revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that after serving as a Messman on board the SS PRESIDENT HARRISON and still under authority of the document above captioned on or about 12 November 1969, Appellant did wrongfully have in his possession 307.5 grams of hashish at Port Newark, N.J.

At the hearing Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a U. S. Customs Laboratory Report and Testimony by the two arresting Customs investigators and the Customs chemist.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents, issued to Appellant.

The entire decision order was served on 28 May 1971. Appeal was timely filed on 23 June 1971.

FINDINGS OF FACT

On 11 November 1969, Appellant signed off the SS PRESIDENT HARRISON, on which he had been serving as a messman under authority of the document above captioned. At the time the vessel was at Port Newark, N.J. On 12 November 1969, Appellant returned to the

vessel to remove his belongings. Having apparently accomplished this goal, he was apprehended by Customs agents as he approached his automobile; and his luggage was searched. Included in this search was a carton which had been placed in the trunk of Appellant's car either on 11 November 1969 or earlier on 12 November 1969. This carton contained, at the time of the search, a package or packages which proved to contain hashish.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the decision of the Administrative Law Judge is contrary to the weight of the evidence. This contention need not be reached, however, in view of the jurisdictional problem discussed infra.

OPINION

46 CFR 137.01-30(a) (1) provides for the institution of revocation proceedings in cases of misconduct "while acting under the authority of" merchant mariner's document. Alleged "misconduct" while not so acting will not supply the necessary subject matter jurisdiction for revocation proceedings.

It is quite true that a seaman may be acting under authority of his document although he has signed off the ship upon which he has been most recently employed. There are a number of Commandant's Appeal Decisions to the effect. The instant case, however, fits the mold of none of them. Appellant had formally and actually signed off (see Appeal Decision 493), was charged with no misconduct aboard ship (see Appeal Decision 864), and neither worked nor received payment for the day in question (see Appeal Decision 1233).

The only connection between Appellant's status as a seaman and the alleged misconduct was the fact that he was present in the vicinity of the ship because he had returned to remove his belongings. While the act of removal from the ship might, pursuant to prior decisions, be termed under authority of the document; however, once Appellant left the vessel, all relationship with it and his former employer ceased. This case is to be distinguished from Appeal Decision 310 wherein the person charged admitted possession on board the vessel and was apprehended in the act of removing marijuana from the vessel. It is also to be distinguished from Appeal Decision 389 wherein the alleged misconduct occurred on board and immediately following payoff. Appeal Decision 545 is to be distinguished because of the finding therein that the person charged "was directly implicated in the removal of the marijuana

from the ship," and that he was guilty of conspiracy and, therefore, "constructive, if not physical, possession of the marijuana on board the ship..."

The real problem in this case is rooted in the charge and specification. It is quite obvious that a seaman cannot be relieved of his document pursuant to 46 CFR 137.01-31(a) unless he is charged with misconduct at a time while acting under its authority. The charge and specification in this case allege wrongful possession of hashish at Port Newark, N.J. on or about 12 November 1969. While this specification would appear to refer solely to the time of the arrest, it is, arguendo, sufficiently vague as to include some time spent aboard the vessel - a period during which Appellant acted under the authority of his document.

It must be noted that there appears on the record evidence sufficient to allow the drawing of an inference of possession aboard ship and subsequent transfer ashore. Had the specification been so framed, no jurisdictional issue would have arisen. But such is not the case. The Administrative Law Judge decision can be saved only by implying a clarified specification and drawing inferences from the record which do not appear in the Administrative Law Judge's findings of fact. Such a procedure would appear inappropriate especially in light of the inescapable conclusion, afforded by a reading of the record and the Administrative Law Judge's decision, that Appellant was in fact charged with and found guilty of possession at the time of his arrest, not some prior time.

ORDER

The order of the Administrative Law Judge dated at New York, N.Y. on 25 May 1971, is VACATED.

C.R. BENDER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 21st day of September 1972.

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